

## **ENVIRONMENTAL QUALITY COUNCIL**

June 3, 1997, Montana State Capitol, Room 104  
Original Minutes with Attachments

### **COUNCIL MEMBERS PRESENT**

Rep. Vicki Cocchiarella, Co-Chair  
Sen. Ken Mesaros, Co-Chair  
Rep. Haley Beaudry  
Sen. Vivian Brooke  
Sen. William Crismore  
Rep. Kim Gillan  
Sen. Lorents Grosfield  
Rep. George Heavy Runner  
Sen. Bea McCarthy

Rep. Karl Ohs  
Mr. Bill Snoddy  
Mr. Jerry Sorensen  
Ms. Jeanne-Marie Souvigney  
Rep. William Tash  
Mr. Greg Tollefson  
Sen. Bill Wilson  
Ms. Julie Lapeyre

### **STAFF MEMBERS PRESENT**

Mr. Todd Everts  
Ms. Kathleen Williams  
Ms. Martha Colhoun  
Mr. Larry Mitchell

### **VISITORS' LIST**

#### **Attachment #1**

### **COUNCIL ACTION**

- Voted unanimously to allow the election of co-chairs, one from each party.
- Voted unanimously to elect REP. COCCHIARELLA and SEN. MESAROS as co-chairs.
- Approved the minutes from the November 15, 1996 and the December 12, 1996, meetings.
- Adopted a work plan for the interim which included updating the *MEPA Handbook*, conducting general MEPA training, using an evaluative component for the BMPs and requiring the TMDL question be addressed in the water policy area. The committee also decided to identify and look into growth management issues.
- Approved the interim calendar prepared by the EQC staff.

## **I. CALL TO ORDER AND ROLL CALL**

ACTING CHAIRMAN SEN. GROSFIELD called the meeting to order at 8:40 a.m. He asked the secretary to take note of members in attendance. (**Attachment #2**)

## **II. COUNCIL MEMBER INTRODUCTIONS**

With approximately half of the Council's members being new members, SEN. GROSFIELD asked members to introduce themselves.

SEN. GROSFIELD, SD 13, Big Timber, is a cattle rancher. He served as Chairman of the Senate Natural Resources Committee in the 55th Legislative Session.

REP. COCCHIARELLA, HD 64, Missoula, remarked this is her third interim on the EQC. She appreciates the caliber of work which the Council does and the method it uses to arrive at decisions.

MS. SOUVIGNEY, Livingston, House Public Member, commented this is also her third term on the EQC. She also works for the Greater Yellowstone Coalition as a Program Associate.

SEN. MCCARTHY, SD 29, Anaconda, represents the area of Philipsburg, Drummond, Seeley Lake, Clinton, etc. This is her first term on the EQC.

REP. OHS, HD 33, Harrison, served two terms in the House and on the House Natural Resources Committee. He said he is a rancher who is very interested in the issues addressed by the EQC.

REP. GILLAN, HD 11, Billings, stated she is serving her first term in the House. She had previously worked in energy and natural resources fields in Washington, D.C. She represents a family oriented district.

REP. HEAVY RUNNER, HD 85, Browning, is a member of the Blackfeet Nation. He has just completed his second term in the legislature. In his first term, they wanted to put him on the Indian Affairs Committee. He did not like being pigeon-holed in that respect. His background should serve him well on this committee.

MS. LAPEYRE, Natural Resource Policy Advisor, Governor's Office, remarked that she joined the Governor's Office in January. She worked in Washington, D.C. for SEN. CONRAD BURNS for six years.

REP. TASH, HD 34, Dillon, commented that he just completed his third session in the House and this is his second session on the EQC. The Missouri River Headwaters is in his district and his interest in the river basin is one of the main reasons he serves on this committee.

SEN. BROOKE, SD 33, Missoula, stated she has been in the legislature for five terms. This includes three terms in the House and she has just completed the second session of her first term in the Senate. She has been on a natural resources committee for all five sessions. This is her second term on the EQC. She has worked in the Environmental Studies Department at the University of Montana. She is currently the Development Director for the Blue Mountain Clinic.

SEN. MESAROS, SD 25, Cascade, remarked this is his second term on the EQC. He has also served on the Water Policy Committee.

MR. SORENSEN, Columbia Falls, House Public Member, works as Land Use Manager for Plum Creek Timber Company. This is his second interim with the EQC. He stated the committee has very good discussions on interesting subjects and he is happy to be a part of this committee.

MR. TOLLEFSON, Missoula, Senate Public Member, is the Director of the Five Valley Land Trust in Missoula. This is his third interim on the EQC.

SEN. CRISMORE, SD 41, Libby, commented this is his second term on the EQC. His background is with the timber industry. He has been in logging and road work all of his life.

MR. SNOODY, Senate Public Member, is a geologist and has worked in the mining industry for 20 years. He has experience in environmental management and geology. He is happy to be a member of this team.

SEN. WILSON, SD 22, Great Falls, commented this is his first interim on EQC. He served on the Senate Natural Resources Committee in 1995. His background is with the railroad industry. He is a locomotive engineer and has been employed by the railroad for 19 years.

REP. BEAUDRY, HD 35, Butte, stated he is a mining engineer and blaster. He owns his own company. He served on the House Natural Resources Committee this term and has interests in mining property and agricultural property.

MR. EVERTS, Legislative Environmental Analyst, commented he is the lead staff person for the EQC. He is looking forward to a very productive interim. He introduced his staff: LARRY MITCHELL, KATHLEEN WILLIAMS and MARTHA COLHOUN. He explained that in the packet is a listing of subject matter expertise of the staff. JUDY KEINTZ will be working with the Council throughout the interim. She worked for the Senate Judiciary Committee for the last two legislative sessions.

### **III. ELECTION OF OFFICERS**

REP. COCCHIARELLA expressed that due to the bipartisan nature of the work of the EQC, she would propose the possibility of having co-chairs. She served as the vice-chair last interim and felt there were no real responsibilities for that position, except to show up in case the chair had to be absent. She suggested that having co-chairs, one from each party, would be a benefit to the Council as well as the public in the sense that there would be a true representation of nonpartisan effort. Co-chairs would work better by sharing the responsibility of leadership as a more inclusive approach. It would be helpful to have two leaders in the legislature. The goal would

be to have one chair from the House and one from the Senate. This would allow for a EQC leader on the floor of each House when questions were asked, especially on how the Council arrived at a certain position on a piece of legislation. As far as the public and press is concerned, there would not be as many negative attacks on whether it is the majority party that is ruling the Council because there would be leaders from both sides.

MR. EVERTS investigated the law and reported that the Council shall elect a chair and any other officers that it deems appropriate.

SEN. GROSFIELD explained that the make up of the Council is as follows: three Republicans and three Democrats from each House; and four public members who are chosen in a bipartisan manner, one by a majority leader and one by the minority leader of each house. This makes the Council a balanced entity.

MR. EVERTS commented that the law states that the Council shall elect one of its members as chairman and such other officers as it deems necessary. He discussed this with GREG PETESCH, Code Commissioner, and they arrived at the conclusion that that provision would not prohibit the Council from selecting co-chairs even though it states one chairman. The rules state that the nomination for Council chair and vice-chair must be made from the floor after new appointments have been made. The candidate must attain a majority of the votes to be elected and members shall vote for chair and vice-chair by ballot. By tradition, the positions of chair and vice-chair rotate back and forth between the House and Senate. That would mean that this time the chair would be a Democrat from the House and the Vice-Chair would be a Republican from the Senate. There have been two exceptions to that tradition. Between 1983 and 1987, REP. DENNIS IVERSON maintained the Chair for two interims. In 1995 there was a flip of the coin vote won by SEN. BILL YELLOWTAIL, who later stepped down to pursue a new vocation. Once SEN. YELLOWTAIL stepped down, JERRY NOBLE, who was a public member and former senator, became chair.

MR. EVERTS said the rule that members shall vote by ballot has been questioned. According to the statute, the Council is prohibited from casting secret ballots on the vote.

SEN. GROSFIELD was not sure if REP. COCCHIARELLA'S proposal excluded public members.

MR. TOLLEFSON asserted that the co-chair idea was a good one. This might be a way for the co-chairs to be more actively involved in projects and studies.

REP. HEAVY RUNNER inquired as to the functions of a co-chair.

REP. COCCHIARELLA related that the only problem she envisioned would be if the two people couldn't get along. The division of labor would be between the two people. She felt that the Chair of the Council should be a part of the subcommittees.

SEN. BROOKE maintained that prior to each meeting there was a lot of work. It would be very good to share this responsibility.

SEN. MESAROS asked if the rules would need to be changed.

MR. EVERTS explained that the Council had not adopted a set of rules for this interim. The rules would need to be altered to reflect this policy.

MR. TOLLEFSON asserted that the first thing that this nonpartisan group has done is participate in a partisan tussle to establish the chairmanship.

**Motion: MR. TOLLEFSON MOVED THAT THE COMMITTEE INSTALL CO-CHAIRS ON A TRIAL BASIS.**

## **Discussion**

SEN. GROSFIELD inquired if one chair would be from the House and one from the Senate, if one would be a Republican and the other a Democrat. He also asked if public members are excluded.

MR. TOLLEFSON said he was not comfortable with having a public member chair the Council. He believed there should be one co-chair from each branch and they should also represent each party.

SEN. GROSFIELD had concerns about the mechanics of the nomination system. The first nomination could be a House Democrat and the second nomination could be a House Republican. There would need to be two Senate nominations before they could close the nomination. He asked for comment on public members chairing the Council.

SEN. MESAROS was concerned about eliminating public members from the loop.

SEN. BROOKE contended that the key thing the EQC does is create legislation, thus there would be a real necessity to have advocates for that legislation. The best advocates are from the leadership of the Council.

MS. SOUVIGNEY raised a concern about tightening this up in a way that would restrict their ability to elect co-chairs in the future.

MR. SORENSEN asserted that it would be difficult for a public member to be a chair when that person would need to present information to the legislature. That is a very large burden on a public member. It would be much easier for the elected representatives at the capitol to carry forth the intentions of the Council.

REP. HEAVY RUNNER contended that since the public members could vote, they would have equal footing. The legislature gets very political, so he would prefer a public member being a chair.

MR. TOLLEFSON withdrew his comments about excluding the public members. He stated the co-chairs should represent each party.

MR. SORENSEN seconded MR. TOLLEFSON'S motion to establish co-chairs, one from each party.

**Vote: THE VOTE CARRIED UNANIMOUSLY.**

REP. OHS suggested there be two elections. One from Senate nominations, which could include Senate appointees, and then one from the House. He felt that one should be Republican and one a Democrat.

REP. COCCHIARELLA nominated SEN. MESAROS for co-chair.

SEN. CRISMORE nominated REP. TASH.

MR. TOLLEFSON nominated REP. COCCHIARELLA.

SEN. GROSFIELD explained there were three nominations for two positions. There were two Republican nominees and one Democrat nominee.

SEN. GROSFIELD remarked REP. COCCHIARELLA did not have anyone running against her.

**Motion/Vote: MR. TOLLEFSON MOVED THAT REP. COCCHIARELLA BE ELECTED CO-CHAIR. THE MOTION CARRIED UNANIMOUSLY.**

SEN. GROSFIELD asked REP. TASH and SEN. MESAROS if they had any comments.



SEN. MESAROS stated he had reservations about chairing the committee. With the co-chair concept, he felt it would be most effective to have one representative from the House and one from the Senate.

REP. TASH deferred to SEN. MESAROS explaining it would be better to have each house represented.

**Substitute Motion/Vote: REP. TASH MOVED THAT SEN. MESAROS BE ELECTED CO-CHAIR. THE MOTION CARRIED UNANIMOUSLY.**

CO-CHAIR COCCHIARELLA thanked the committee for their unanimous endorsement and also for adopting the concept of co-chairs.

#### **IV. ADOPTION OF MINUTES**

**Motion: MR. TOLLEFSON MOVED TO ADOPT BOTH SETS OF MINUTES.**

SEN. BROOKE, referring to the November minutes - page 11, asked if MR. MARKS had followed up the verbal reports from DEQ, DOA, and DNRC. They were intentionally excluded.

MR. EVERTS explained that was followed up in the December meeting.

**Vote: THE MOTION CARRIED UNANIMOUSLY.**

#### **V. ADMINISTRATIVE MATTERS**

MR. EVERTS remarked he would like to touch on three areas: budget, resources and publications. During the session the EQC came in with a \$5,000 decrease due to administrative efficiencies in the reorganization process with the Legislative Services Division. That budget was not altered during the budget proceedings. They received their RIT allocation of \$28,000. That is a tenuous appropriation. The Council budget for the interim for meetings, salary, and mileage is about \$53,000. The budget includes ten regular EQC meetings and up to fifteen subcommittees of eight people.

The Legislative Environmental Policy Office has a total of 5 FTEs. MAUREEN THEISEN coordinates all publications and is their administrative officer/receptionist. They use the term "interim" FTEs which equals about 2,900 hours. The EQC staff has a significant comp time/vacation time liability. The total is 3,196 hours. This equals over one FTE. That includes accruals of vacation time for this interim. Off the top, he took out MS. THEISEN'S administrative reception time. Three quarters of her time is publications time. She devotes one-quarter of her time to research activities with the Council. State employees are entitled to take their vacation. Comp time is an entitlement which is discretionary within the amount of resources and the workload.

MR. EVERTS said he is the person who drafted the electrical industry restructuring legislation during the interim. The Council has, in their statutory responsibilities, a fairly significant energy policy mandate. He was asked by the Legislative Services Division to assist in staffing of the Transition Advisory Committee which oversees electrical industry restructuring. That is for this committee to decide. He would be working with STEPHEN MALY, LSD Research Analyst, and the Public Service Commission staff. If he were to do this, it would take .25 FTEs of his time. He has also taken time out for general administration activities, including attending meetings to stay current. The net would equal 3.2 FTEs or approximately 9,429 hours.

The EQC has hired interns on a contract basis who have been very productive for them. They have eight people from across Montana who have expressed interest in working as interns for the EQC. They have about \$2,000 for contracted services.

CO-CHAIR COCCHIARELLA stated there were comp time balances in this Division of 9,488.5 hours as of May 9th. The limit to all of their activities will come not because things are not funded through the legislative process, but because the legislature does not have enough staff. This is an issue of huge concern and is also a reason they are using contracted services and interns. Legislators may have to become more and more responsible for the research and work that goes into the products they produce in the interim. MR. EVERTS has 862.5 comp time

hours. MS. COLHOUN has 254.5 comp time hours. MR. MITCHELL has 124.2 comp time hours. MS. WILLIAMS has 228.5 comp time hours. This is a big problem in the Council.

MR. EVERTS remarked that there are numerous publications which the EQC staff produces. One of the Council's most critical statutory functions is the dissemination of nonpartisan information. Their newest publication was prepared by MICHAEL KAKUK, former EQC staff member and MICHELLE BRYAN of the Montana University System Water Center. MR. EVERTS said he received a call from a young man from Great Falls who wanted to understand the water quality laws of the State of Montana. They had a tremendous response from legislators who wanted this handbook.

## **VI. COUNCIL AND STAFF RESPONSIBILITIES**

### *1. EQC Statutory Responsibilities*

MS. COLHOUN explained the EQC'S statutory responsibilities. The EQC was created in 1970 with the Montana Environmental Policy Act (MEPA). MEPA has three parts. The first part sets out the policy and purpose of the Act. The purpose of the Act is to encourage productive harmony between humans and the environment. The second part of MEPA sets out the process of environmental review that agencies follow when they take an action that may affect the human environment. Part three established the EQC. This gave the EQC the authority to conduct hearings, examine government documents, and other things necessary to carry out its duties.

There are other responsibilities created in statutes other than MEPA. One example is water policy. Section 85-2-105, MCA establishes the EQC's water policy duties which include general oversight to make sure that state agencies implement state water policy as it should be implemented. Oversight duties can be requested by citizens, legislators or agencies. Page 11 of the *Council Member's Guide to the Environmental Quality Council* sets out a summary of the statutory duties and the appendix includes these duties in full.

## *2. EQC Rules and Procedures*

MR. EVERTS stated that he will revise the rules of procedure on page 5 of the *Council Member's Guide to the Environmental Quality Council* to reflect the policy which was adopted this morning in terms of co-chairs. If there is a question as to the rules and procedures, the Senate rules and procedures of the 1997 Legislature will be followed. Generally, proxies are discouraged. If a member is unable to attend, the process is to deputize a member and provide them with a written proxy on a specific question. If the vote deviates from that specific question, the proxy is not used. Chairs can establish temporary or standing subcommittees to perform the duties of the Council. The subcommittee chairs will work closely with the Council and make periodic reports to the Council. Requests for research that are not within the adopted work plan may not exceed two person work days of work without approval of the Chair.

## *3. EQC Groundrules for Interaction*

CO-CHAIR COCCHIARELLA articulated there are three Ms in how they operate. One is mutual respect for each other and especially for the people who come before this Council. The second is monopoly is not allowed. The Council makes sure all sides are heard, rather than one perspective. The third M is mucho input. That refers to input that they expect and request.

CO-CHAIR MESAROS added two key words: open and accessible. The Council will be open to any comments at all times. Accessibility is key in that the members avail themselves to be accessible for input.

REP. HEAVY RUNNER stated it was important to allow for public input at each meeting.

SEN. BROOKE stated a good set of groundrules was important especially for consensus building.

## *4. Staff Mission Statement*

MR. EVERTS professed that the staff is nonpartisan. The staff's mission is to assist the EQC in achieving their mission and also to provide the best information possible to their clients. Their

golden rule is they do not have an opinion as nonpartisan staff. They will explain the impacts of the direction the Council is taking and the possible consequences. It is up to the Council to decide how to pursue their interests. Their first set of clients is the Council. The second set of clients is other legislators and the general public. There is a significant amount of expertise on staff in a variety of areas (**EXHIBIT 1**). State agencies make up the third set of clients. There are frequent inquiries regarding the implementation of the Montana Environmental Policy Act.

## **VII. SUMMARY OF 1997 ENVIRONMENTAL AND NATURAL RESOURCE RELATED BILLS AND LEGISLATION**

### *1. EQC Bills*

MR. MITCHELL reported that it is the Council's responsibility to develop, recommend and oversee the implementation of policies for the State of Montana in terms of environmental protection and natural resource development. The last legislature established new policies and made changes to existing policies. He referred to the Update on Natural Resources and Environmental Legislation During the 1997 Session, (**EXHIBIT 2**) .

- **Air**

House Bill 39, dealing with air quality, repealed the Hannah bill which exempted the Billings area from the state sulfur dioxide standards.

- **Wildlife**

Several wildlife bills were passed. Senate Bill 141 added significant penalty ability authorities to the Fish and Game codes to impose significant penalties in addition to Fish and Game misdemeanors in serious cases.

- **Water (Quality and Quantity)**

The water quality and quantity bills were a little different from the 1995 Session. The emphasis seemed to be more on water quantity this time. House Bill 546 is called the TMDL bill, which basically outlined the procedures by which DEQ has been directed to develop total maximum daily loads (TMDL) on those sections of rivers and streams in Montana that are impaired.

- **Energy**

Energy was a big issue this past session. Senate Bill 224 made significant revisions to the Major Facility Siting Act and changed the triggers for which those applications are reviewed in detail by the state. Senate Bill 390 deregulates the Montana electrical utility industry.

- **Growth Management**

The area of growth management is mentioned because of the bills which did not pass. House Bill 450 and SB 137 were both debated at length and ultimately did not pass. The Council has already been requested to look further to see if there might be some policy developed. House Bill 450 dealt with the definition of "legal description" and "tracts of records" for sections of land which had documents on file with federal repositories, government lots and quarter quarter sections. Senate Bill 137 dealt with an issue out of Belgrade which would have provided for cluster development in open space, a different way of developing land.

- **Fisheries**

Under fisheries, HB 271 increases some penalties for bucket biology, the illegal import and transplanting of fish in different waters.

- **RIT Tax and other Environmental Tax and Revenue Issues**

This is always a legislative issue. Nothing earth shaking happened, with exception of SB 377.

- **Agriculture**

SJR 4 requested that the appropriate interim study committee look at family farming and ranching and various opportunities for people to stay in that field. His understanding is that the interim committee has not been assigned.

- **Cultural Resources**

House Bill 5 was the Virginia City and Nevada City purchase.

- **Mines/Mining**

This area had minor policy changes. House Bill 395 changed the venue for litigation to the local district court except for civil penalties, which can still be brought in Helena.

- **Remediation**

House Bill 7, which was inadvertently omitted from the handout, is the appropriations bill for the RIT funds. Three million dollars were appropriated to the DNRC for the reclamation

development grant projects. Most of those projects were remediation of oil and gas and mining damages to the environment. Senate Bill 377 changed the way in which the state allocates responsibility for remediation of sites in Montana. Instead of a strict joint and several liability policy, there is now an allocation of responsibility through a third-party mediator who will establish who is responsible for clean up. The state will be a party to that in terms of the orphan's share allocation of responsibility.

- **Waste**

Senate Bill 332 sets up a financial assurance responsibility requirement for waste tire management facilities and also mandates that the EQC conduct a study of waste tires during the interim.

- **General Environmental Legislation**

House Bill 132, one of the EQC bills which was introduced and passed, requires mandatory biennial reporting of certain natural resource and environmental compliance and enforcement information to the Council. House Bill 293 was the environmental self-audit bill which we may be asked to take a look at over the interim as well.

Senate Bill 72 was an administrative side issue which gave the responsibility of keeping the state water information system data to the Natural Resource Information System Program and removed it from the DNRC.

## **VIII. REVIEW AND SELECTION OF INTERIM WORK PLAN OPTIONS**

### *1. Introduction - Mr. Everts*

MR. EVERTS explained that at the beginning of each interim the Council develops a blueprint which provides a systematic approach of allocating resources available (**EXHIBIT 3**). They have developed a work plan matrix, (**EXHIBIT 4**). The first column deals with assigned topics. The mandatory issues are the Waste Tire Study, MEPA, Environmental Conditions and Trends (Indicators), Water Policy and the EQC bill requiring mandatory Compliance/Enforcement (C/E) reporting. The other major category is optional topics. The past Council recommended looking at these topics. They wanted the Council to realize the potential resources it would take to conduct these types of studies. The most important category is "other topics of

interest". This may be Council member's items of interest including topics from the public, which the public members might like to see addressed. There has been a citizen request to study mosquito abatement districts and chemical applications within those districts. REP. SWANSON has a request in terms of growth management. SEN. HARGROVE has a request on open space. SEN. JERGESON has requested a ranch study. These letters are in the packets, **(EXHIBITS 5, 6, 7, and 8)** .

The FTE allocations are guesstimates based on past studies. There are detailed tasks which could potentially happen under each option. MR. EVERTS also presented a list of general oversight responsibilities, **(EXHIBIT 9)** .

SEN. GROSFIELD questioned if the general oversight responsibilities were charged by statute. MR. EVERTS commented that MEPA provides the Council with general statutory oversight responsibilities.

SEN. GROSFIELD asked what the Council's responsibility would be in respect to the Kendall Mine. MR. EVERTS explained that topic was recommended by this Council at the December meeting. It was decided the Council should receive an update on the status of the mine reclamation and closure process from DEQ.

REP. HEAVY RUNNER inquired if it was standard practice to have carry over in terms of assigning tasks for a new interim committee. MR. EVERTS remarked that has been the normal process in terms of the Council's work. The Council develops legislation for specific issues and carried with that is oversight responsibility. The previous Council will make a recommendation to the current Council and it is up to the current Council to accept or reject the recommendation.

## *2. Review of Individual Work Plan Elements*

### *a. Assigned Topics*

#### *(1) Legislatively Assigned Topic*

##### *A. Waste Tire Study*



MR. MITCHELL explained that the waste tire study came from the directive in SB 332 which states that the EQC shall study the issues associated with managing, processing, treating, and disposing of waste tires and report the results of the study, including any recommendations for legislation, to the legislature no later than October 1, 1998. This bill was introduced in the Senate and passed. It was amended in the House. The bill attempted to put financial responsibility on individuals who separated out tires for tire landfills. In 1977, when he worked for DHES, the legislature appropriated a quarter of a million dollars for the purchase of a tire shredder under the junk vehicle funds. The study concluded that it just wasn't worth the money, at the time. The majority of the tires in this state are buried. Even though this is a statutorily directed and mandated study, that does not mean it has to be the number one priority, but it should be addressed.

Option C from the matrix would take a look at the current situation. The Council would look at where the tires are going and if there are some problems out there that need to be addressed. This could be done through a working group of the individuals who met in the House on the amendments. This would be the tire dealers, disposal companies, etc. Option B would be to look at how this is handled in other states. Most other states have a publicly subsidized tire recycling program. This may require a small subcommittee. Option A would involve looking at the worldwide market for tires. The Council would take a look at all the possible alternatives available for recycling, management, transportation and processing of tires available nationwide. This would require a subcommittee. MR. MITCHELL also referred to a handout, **(EXHIBIT 10)**, which is a segment of the 1994 DHES *Integrated Solid Waste Management Plan* which addressed the management of waste tires in Montana.

*(2) Statutory Requirements*

*A. MEPA*

*1. MEPA Implementation and Improvement Project*

MS. COLHOUN explained that the EQC has three duties under MEPA. The first is the MEPA implementation and improvement project. MEPA directs the Council to review and appraise

programs and activities of state agencies to make sure that they contribute to the policy of MEPA and encourage conditions under which humans and the environment can co-exist. During the 1991-1992 and 1993-1994 interims the Council initiated its MEPA implementation project. A product of that project was the *MEPA Handbook*. Over 600 agency staff were trained. There is also a system of document review for environmental impact statements and environmental assessments. The last product of this project is the selection of the George Darrow MEPA award, which awards excellence in MEPA implementation. MEPA was amended in 1995 primarily to require that state agencies include an evaluation of regulatory impacts on private property. Last interim there was a subcommittee that developed guidelines for the implementation of this regulatory impact analysis. Resources were not available last interim to update the handbook to include those changes and to provide training for agencies to include the changes that impact analysis. There is also a different standard of review.

Option A includes the full implementation project. This would be totally redoing the *MEPA Handbook* to update the 1995 amendments, conduct training, have a liaison position, review documents and select the George Darrow MEPA award. Option B cuts out updating the *MEPA Handbook* and the training, but keeps the position to assist agencies in reviewing documents and also includes the selection of the George Darrow MEPA award. Option C would be to have someone on staff to answer questions as they come up and then selecting the George Darrow MEPA award.

MR. TOLLEFSON asked if MEPA training continued last interim. MS. COLHOUN explained that there was a session which involved training the Council, but no agency training.

SEN. GROSFIELD commented there was a lot of agency training the session before. MR. EVERTS stated there is a fairly good turnover rate in state agencies and they have been requested to provide MEPA training. There have also been comments about the regulatory community and the public having training sessions as well.

SEN. GROSFIELD questioned what was involved in updating the handbook. MS. COLHOUN stated this could be kept to a minimum by inserting, where necessary, the regulatory impact analysis guidelines. MR. EVERTS remarked the changes to MEPA were supplements to the Act, so they would need to be added. The regulatory impacts involve how much this would cost the permittee or the person who is being regulated and then the tradeoffs between the costs and impacts. There are scientists in state agencies that have good ideas on addressing the physical impacts of the decision. There is expertise on the economic and social impact analysis.

SEN. GROSFIELD questioned what type of documents would be reviewed. MS. COLHOUN reported the documents are environmental impact statements and environmental assessments. To date, the review has not been extensive. MR. EVERTS added there is a procedural content checklist and on specific subjects they have a substantive content checklist.

SEN. GROSFIELD asked why the EQC handled this as opposed to the agency which is dealing with the person involved. MR. EVERTS conveyed that in the past the Council has requested that staff review the documents. They are required to receive all environmental review documents in the state. They put together a database. When time allows, the documents are distributed by subject matter expertise and staff members review them. If they see procedural deficiencies, they call the agency and advise them of potential problems.

REP. HEAVY RUNNER contended that since the resources were limited for interim work, isn't this work that should be ongoing as far as training and updating. MR. EVERTS conveyed that this is an ongoing activity but this needed to be checked every interim. Agencies were getting into trouble in terms of implementing the Act. With the reorganization which has taken place, there isn't a continuous evaluation process.

MS. SOUVIGNEY asked to what extent has the EQC's review resulted in changes to agency documents. MR. EVERTS remarked they provide a handbook and training. They have seen the changes. Fish, Wildlife and Parks previously would copy their sample EA.

MS. SOUVIGNEY further questioned whether the number of challenges to the MEPA documents has decreased. MR. EVERTS claimed there has not been any quantified evaluation.

CO-CHAIR COCCHIARELLA commented that the Council should be focusing on education. She has seen positive results from the training sessions. The documents should be useable and complete. An incomplete document is misleading. EQC training could be included with a public and agency training session in Helena, rather than dedicating an entire Council meeting to training.

## *2. Environmental Conditions and Trends*

MR. MITCHELL conveyed that part three of MEPA addressed the responsibilities of this Council to gather timely and authoritative information concerning trends and conditions of the environment, make recommendations, conduct investigations and studies regarding systems and environmental quality, identify changes in the environment and generally keeping track of the state of our environment and improvements which can be made. Last year for the first time in many years, the Council attempted to overview the state environment by directing the publication of the environmental indicators book. This was put together with 1,800 hours of staff time and approximately \$11,000 of grant funding. It was distributed at the end of the last interim. The project began as an environmental assessment project. The attempt was to identify some trends, provide information to the public and also to provide priority setting for the Council. The last Council voted and approved a suggestion to review feedback regarding this publication and continue discussion and work on the document as deemed appropriate. They produced 2,300 copies. They have received 28 written responses. He provided a brief summary of the comments received to date, **(EXHIBIT 11)** .

MR. MITCHELL stated that Option A entailed redoing the document by coming up with different indicators and better subjects and topics. Option B would be to make more copies available and try to get the public more involved in what they think is important. Option C would be an internal review by this Council to assess the effectiveness of this report and look at what should be done in the future in terms of complying with the statutory requirements to keep

track of trends and conditions of the environment. This report could be put on the internet for better access and updating.

CO-CHAIR MESAROS commended the staff for the very effective booklet.

MR. TOLLEFSON questioned whether there would be any supplemental funding to include additional printing of these booklets. MR. MITCHELL explained the people involved were not interested in supporting any more state of the environment reports. There would be dollars available to go the next step in terms of prioritization. They may be able to obtain technical assistance from national groups.

CO-CHAIR COCCHIARELLA, regarding obtaining technical assistance from national groups, questioned what groups that would encompass. MR. MITCHELL stated that one group would be the Green Mountain Institute in Vermont that is putting together a team to work on indicator projects and efforts in other states. They are available to meet with public groups. A legislative body might be something new and appealing to them. There is also a group in Colorado.

CO-CHAIR COCCHIARELLA felt that there were research projects going on continually on topics covered in the book which the Council could access. MR. MITCHELL stated that last time they started with the 1975 report and tried to identify what indicators were utilized. They met with the agencies to see if this information was still available. This information was presented to the subcommittee and they selected what they saw as valuable. There is information from a variety of sources.

MS. SOUVIGNEY felt the FTE was estimated pretty high due to the amount of work put into this project last time. MR. MITCHELL contended he anticipated the additional effort involved in drawing the public into this project. The public was locked out last time. These efforts are usually presented to the public first.

MR. SORENSEN inquired if the agencies were interested and may want to improve their data collection. MR. MITCHELL stated that the DEQ was interested and asked for 70 to 80 copies of the document. They are also committed to going through a performance partnership agreement with the EPA in the near future.

### *3. General Oversight*

MS. COLHOUN reported that this is the third duty under MEPA. She referred to the handout, **(EXHIBIT 9)**. The topics they arrived at were from recommendations from last interim, issues which are topical, legislation, and requests which have been received.

- **TMDL Oversight** came from legislation in HB 546, which clarifies the DEQ's role in monitoring and assessing the quality of water and developing total maximum daily loads for impaired waters.
  - **Kendall Mine Update** comes from a letter received from a citizen who lived near the mine. He had a water loss in the vicinity of the mine and wanted the Council to address that.
  - **Growth Management Issues** involve legislation which came up regarding growth management and they also had requests from REP. SWANSON and SEN. HARGROVE. The farm and ranch study and agriculture fits in there. Growth Management Issues and Tribal/State Issues are different from the others on this list because they would require more resources.
  - **Voluntary Contaminated Site Clean Up** came about from a letter from the DEQ. There were four bills this session dealing with voluntary contaminated clean up.
  - **Forest Management Program** is something the EQC has historically covered. The TMDL bill could affect that.
  - **Hazardous Waste Management** received considerable review last interim. The federal underground storage tank deadline will come up on December of 1998. There are a number of tanks not meeting the federal requirements.
  - **Solid Waste Management** had two bills this session.
- Environmental Impact Statements** were included because of the EQC's ad hoc oversight over the MEPA process. There are currently a number of projects which require an EIS.

- **Tribal/State Issues** came from the enforcement and compliance study. There was a recommendation to look into tribal/state primacy issues.
- **Energy Development and Conservation Oversight** was included as an EQC statutory directive and is a topical issue with the deregulation.

SEN. GROSFIELD stated he would like to see the Council spend some time on HB 293, the environmental self-audit bill. If the DEQ decides to adopt rulemaking, the Council should be updated on that. This was one of the most controversial bills in the last legislative session.

CO-CHAIR COCCHIARELLA requested a continued oversight of the restructuring of the DEQ. She would also like updates on the utility restructuring activities of that committee. She questioned whether the Auditor's Office was preparing a report on permitting. MR. EVERTS stated that they were going to revisit the water quality audit but he had not heard anything about permitting. CO-CHAIR COCCHIARELLA also felt it was important for the Council to be updated about air quality and how it is affecting the state.

#### *B. Water Policy Oversight/Evaluation/Communication*

MS. WILLIAMS explained that the statutory mandate for water policy was transferred from the Water Policy Committee, which was eliminated in 1995, to the EQC. There are two levels of water policy mandate. One is a broad oversight evaluation and communication role. The other role is related to specific programs and efforts of state agencies. The status of the state water plan is that most of the statewide chapters have been prepared, except for the ground water chapter, which is being revised. There is also a basin oriented approach where a Watershed Coordinating Council has been meeting and that is considered part of the preparation of the state water plan. There is also a Wetlands Council which has been formed.

The *1985 Report of the Select Committee on Water Marketing* gave rise to the Water Policy Committee. In 1988 there was a contracted document, which is an *Evaluation of Montana's Water Rights Adjudication Process*. In 1990 the Water Policy Committee covered the program specific information and focused on federal/state relations. The 1992 report to the legislature

from the Water Policy Committee dealt with drought response, wilderness dam maintenance, and federal reserved water rights, in addition to the program specific requirements. A combined effort of the Council and the Water Policy Committee was the SJR 29, Water Quality Nondegradation Study, in 1995. A separate Water Policy Committee in 1995 dealt with the program specific requirements and again state drought response, wilderness dam maintenance and water user/recreational user fees, instream flow and nondegradation.

Option C is a reactive approach. The staff would report on what they were requested to report. Option B would have the staff look out for projects which would be of interest to the Council. They would observe and participate in the collaborative efforts. Option A is pro-active and has options for specific studies within the Water Policy Oversight topic. Last interim they were at Option C, but since then there has been the production of the Water Quality Handbook and active participation in the collaborative process.

### *C. Mandatory Compliance and Enforcement Reporting*

MS. WILLIAMS stated the legislative mandate for this is HB 132, which is the only legislative outgrowth of the Council's compliance and enforcement study. She presented HB 132, **(EXHIBIT 12)** . This bill requires the natural resource and environmental agencies to conduct biennial reporting to the Council of their compliance and enforcement programs. The compliance and enforcement study came about through HJR 10 from the 1995 Session. The Council set up a subcommittee of ten members. The resolution requested the Council to give priority to the study of compliance and enforcement programs of the state's natural resource and environmental agencies. The Council was asked to look at other states and investigate the proper balance between compliance and enforcement tools including training, information, and penalties. All the optional topics on the matrix are a result of this study. This study generated 32 recommendations and a host of findings and conclusions of the subcommittee. Twenty-eight different state programs were reviewed.

MS. WILLIAMS asked, "Why HB 132?" As part of the review of state programs, there was a real differentiation in the ability of the state programs to provide trend information. The



agencies recognized and agreed that they need to have that information on hand. There is no fiscal impact projected by the agencies because they felt they needed to gather this information themselves as well. Some of the reporting requirements included are: Item (b) - What is their regulated community and what percentage is in compliance? Item (c) - How serious are their noncompliances? How many are there? How do you find out? How many are pending? Item (d) - What is the Department doing about that? Subsection (2) relates to the quantitative trend information.

Option C would be to hand HB 132 to the agencies and have them report however they chose. This would be a verbal presentation to the Council. Option B would allow the staff to work with the agencies to develop a new format which would focus on the topics in HB 132. Option A is to update the Program Summary section of the *HJR 10 Technical Appendix*. Depending on what choice the Council makes, the mandatory reporting may cover more of the general follow up.

*b. Optional Topics*

*1. General Compliance and Enforcement Study Follow-up*

MS. WILLIAMS remarked that the staff went through the 32 recommendations from the Council. Recommendation A4 talks about enforcement policies and Recommendation C6 talks about enforcement manuals. There would be a lot of overlapping.

Option D would be no Council action. Option C would be to select a few recommendations. Option B would have the staff go through the general recommendations, develop a list of questions, and then the Council would ask the agency personnel to respond to those questions. There is no Option A.

*2. DEQ Penalty Consistency Assessment*

MR. MITCHELL conveyed that the recommendation on DEQ penalty assessments was that during the 1997-1998 interim the EQC and DEQ should consider evaluating the penalty and enforcement authority specified in the various state environmental statutes with the goal of

increasing consistency. There is a variety of enforcement authority. There may be civil, criminal, and administrative penalties or injunction relief. There is no consistent pattern.

Option C, B and A only vary by the scope. Option C would take the programs from the Compliance and Enforcement technical appendix and compare those enforcement authorities and penalties against themselves. Option B would broaden that to see how we compare with other states, perhaps in the Intermountain Region. Option A could be to add to that review a comparison between the Montana programs and also comparison between the Montana programs and other programs in other states. There could also be a comparison of the environmental and natural resource laws and penalties to other Montana laws and penalties.

MS. SOUVIGNEY questioned if the DEQ was planning to do anything. [REP. COCCHIARELLA later asked that this be clarified to inquire what the DEQ was doing regarding consistency in evaluating the penalty and enforcement authority specified in the various state environmental statutes.] MR. MITCHELL stated they had not had any conversations with the agency. He did not know if they are planning to prepare a study. MS. WILLIAMS commented that the DEQ requested EQC assistance with assessing the consistency of their penalties across programs.

REP. TASH felt it was important to coordinate with the DEQ and for the agencies to support one another.

### *3. Primacy*

MS. COLHOUN remarked that the study recommended that the EQC facilitate a process to further identify and address primacy issues. Last interim the DEQ came up with nine issues of concern they had in their relations with the EPA. The EQC staff called the other states in Region Eight and asked if they experienced similar concerns. Most did, but preferred to deal with them on a one-to-one basis with the EPA and not involve other states in the process.

Option A would include facilitating a process to identify and address primacy issues and make that a broad scope which included federal, state, tribal and local government primacy issues. Option B would limit that scope to state and federal relations. Option C would limit the scope to a specific DEQ/EPA initiative that the Council would oversee. Overriding in all options would be to further evaluate primacy issues between the state and tribes.

REP. HEAVY RUNNER felt there was a lot of confusion and philosophical contradictions. In the book issued, the State Constitution is referred to and it states they own every and all water. Further on, that is not clear. There is legislation which reverses the Tribes on water rights. At times, the State acts like the water stops flowing when it hits the reservation border. The headwaters begin on his reservation. The State Constitution states that all lands owned or held by any Indian or Indian Tribe shall remain under the absolute jurisdiction and control of the Congress of the United States. There is other constitutional language that has rights, privileges and immunities reserved to Indians. The philosophical approach is that the state owns all the water that flows, on the other hand, they are not sure. They want to go through the process of Water Compacts but a mixed message is sent when the Environmental Protection Agency allowed the Salish-Kootenai Tribe to have some control of their water in terms of water quality. Immediately, the state went to court rather than show any interest in terms of state and tribal cooperative agreements. The book says this issue may require adjudication. He is not sure that is always the responsible way to go. He said the legislature needs to be consistent when it puts forth legislation in this area. This process can be moved along with communication.

#### *4. Voluntary "Best Management Practices"*

MS. WILLIAMS related that this is an outgrowth of the compliance and enforcement effort. The assumptions they made is that Best Management Practices (BMPs) relates to water practices that, if implemented, help to reduce water quality impairment. This is most often associated with nonpoint source impairment. The Council needs to decide if they are more interested in the BMP side or the voluntary side. The ISO is an international effort to develop voluntary approaches to managing environmental systems by industry. The Council needs to define BMP and voluntary approaches. In the compliance and enforcement study, the Forestry BMPs

program was called out as a program that worked. An example of a forestry BMP is giving special attention to steep slopes containing material that could roll down slope and fall into a stream during burning. Not only are the BMPs incorporated in the compliance and enforcement program for forestry, but there is also a heavy informational component and an audit component. There are four other Montana programs that use BMPs.

Option D is no action. Option C is a mini-seminar. This is an informative effort. Option B is informational as well as evaluative. This would be a systematic review rather than just a seminar. Option A is a very intensive approach and that would be attempting to move forward with identification and evaluation of additional Montana programs that could benefit from BMPs.

REP. TASH asked for examples of Option A. MS. WILLIAMS explained there is a spectrum they are using. There are a lot of programs which use engineering or industry standards as a condition of permitting. Maybe there is a more voluntary approach that would be successful. Perhaps BMPs are out there but are not being incorporated into the regulatory structure or land use applications. The forestry BMPs are voluntary but there also is an audit program.

## *5. Other Potential Study Topics*

### *a. Council Discussion*

MR. EVERTS conveyed several requests that were presented to the EQC. REP. SWANSON had issues with the subdivision laws. SEN. HARGROVE would like to have the Council look into incentives for open space. SEN. JERGESON would like the Council to look at nonregulatory means of encouraging and strengthening producer ownership and retention of family farms and ranches in Montana. There is a request from a rancher from Townsend who has a problem with a pesticide application regarding mosquitos and would like the Council to look at how the mosquito abatement districts make determinations on pesticide use.

SEN. GROSFIELD assumed self audits were on the list. He felt the letter from the rancher from Townsend was unclear and more information was needed. MR. EVERTS explained he was

realizing biotic controls for noxious weeds on his ranch. The pesticide that the mosquito district was requiring him to spray would kill the biological control of the noxious weeds.

MR. TOLLEFSON felt the growth management question was difficult to address this afternoon. He would ask the staff to identify some key issues they could evaluate and decide whether or not to go further. He expressed concern that all the staff time could be used up on growth management issues. He suggested that the work plan be flexible.

SEN. GROSFIELD felt there were growth management issues they needed to address. REP. SWANSON'S request has an issue which needs to be looked at creatively. SEN. JERGESON'S request involves both an urban and rural issue. He came up with a .5 FTE which could be allocated to growth management.

MS. SOUVIGNEY pointed out that a lot of comments on the indicator report went to two primary areas that people wanted to have more information. One was recreation, but the major issue was growth management. They wanted a better picture of what's happening to the lands.

CO-CHAIR COCCHIARELLA commented that the Missoula delegation met with the county commissioners and their main concern was growth management and how it related to water, air pollution, open space, and land use issues. An EIS could include other related topics which may have something to do with MEPA. The Yellowstone Pipeline, Madison Mission, Rock Creek Mine, the Seven-Up Pete, and McDonald Gold are controversial issues and the Council should have some oversight. On the issue of the self audit, the EPA new air quality standards and primacy all go together. With the shortage of FTEs and lack of help to get this done, they should be thinking about what is mandatory, what is optional, and what is important.

SEN. GROSFIELD remarked it would make good sense not to totally allocate all FTEs right now. He left .7 wide open. There are always issues which come up in the interim.

SEN. BROOKE conveyed that her preference would be a realistic choice. The Council should concentrate on two or three important issues. She said she would like to go in depth on a few items.

*b. Public Comment*

**Conrad Parish, representing the Kendall Mine in Lewistown**, commented on the update. He asked the Council not to adopt this item for their agenda. He believed it to be an optional topic. This is the only item that is not a policy or an issue item, it is a specific one-entity compliance question. The letter the Council received is an attempt to politicize a largely administrative process of the Kendall Mine closing in as cost effective and environmentally effective fashion as they can. Two days from now he will be in Nevada to receive the Bureau of Land Management's Health of the Land Award, which is the highest award the BLM can give to a mining company and this is for the reclamation efforts at the mine. They conduct their operation in a fishbowl.

CO-CHAIR COCCHIARELLA asked Mr. Parish if he had attended an EQC meeting where they have updates on projects. He commented he had not. CO-CHAIR COCCHIARELLA contended, if this mine closure is an example of how it should be done, it is important that they have an update. They would like to know what is going on. Mr. Parish remarked that when there are milestones that have been reached or are failed to be reached, that is the type of information they would see as important to the Council.

**Sandy Olson, Department of Environmental Quality**, stated they would be available on enforcement studies and would be more than willing to cooperate and coordinate with the Council at any time. They are very interested in providing input on the growth management issues as those affect many of their programs, particularly in the area of subdivisions.

*3. Adoption of the Work Plan*

MR. TOLLEFSON presented a package of proposals. The first thing he suggested was a list of general oversight priorities as indicated, leaving in the Kendall Mine project. There should be an update on the implementation on HB 293, the self audit bill. Updates on the restructuring of the

DEQ should be included as well as an update on federal regulations and requirements and what the implications would be for Montana. That is what he would include in general oversight.

In the assigned topics matrix, he felt the waste tire study should use Option C, without establishing a work group. The staff should put together what information they can gather. If it is then deemed necessary to have a working group, one could be set up. Under MEPA he proposed Option B, continuing what they did last interim. Under Indicators, he suggested Option B. He didn't think it was necessary to generate a new indicator document at this point. They need to evaluate the tool that has been created and look at ways to upgrade it in the future. Under Water Policy, he would go with Option B which would give the latitude to address emerging issues in the water quality area. Under Mandatory C/E Reporting he would recommend Option B. Option C does not provide for the agencies giving the Council information in a consistent format and also incorporate responses to general C/E follow up under the optional section. Under the Penalty Assessment, the agency itself should well be able to identify and come to the Council if there is a specific role they could play once they identify their own problems related to inconsistent penalties. He would not provide any staff time for penalty assessment at this time. Under primacy, he would select Option C. We need to continue discussions and pay attention to primacy issues both related to state and federal and state and tribal issues and become a little more understanding of what inconsistencies are involved. Under voluntary BMPs, he recommended Option C. They should leave the door open to continued involvement and aiding and facilitating the involvement of BMPs in additional programs. That would leave .85 FTEs to address unidentified growth management related issues. For the oversight topics he came up with .05, because these involve presentations from agencies.

SEN. BROOKE followed up on her idea of focusing on only one or two items. The TMDL work will be ongoing for a few years. Listening to what the staff had to say about voluntary BMPs and how that can work together with successfully implementing TMDLs, she has a very strong interest in trying to advance the EQC in only three areas. Those three areas would be MEPA, Water Policy and Voluntary BMPs with the focus of working within the TMDL structure as was implemented by HB 546. In addition to that, she would do the oversight in the minimum

way with the inclusion of the self audit bill. MEPA is one area where they do very good work. She said she would hate to forego the options in Option A, particularly conducting agency regulated community and public training. That is where the agencies and the public look to the EQC. The Water Policy Committee was folded into the EQC. The answer to prevent spending a lot of money to clean up water is through voluntary BMPs. She would choose Option A for the three areas. She would go with Option C on the indicators.

MS. SOUVIGNEY wasn't clear on where the growth management would fit into their plans. She questioned if .85 FTE was for growth management. MR. TOLLEFSON stated that was his plan. MS. SOUVIGNEY would like some commitment for growth management. She would like to see TMDL fit under water policy, that could be an example of one pro-active emerging issue.

REP. OHS commented his priorities were almost identical to MR. TOLLEFSON. He felt that the general and mandatory reporting could be put together. By throwing out the penalty assessment and staying with primacy, they are narrowing this about as much as possible. The top matrix is mandated. The number one priority should be growth management.

CO-CHAIR COCCHIARELLA explained that regarding the waste tire study, the sponsor would be interested in putting together the people who were interested in the study during the session. That working group would be one or two meetings of people who are impacted by that, which would be disposers and tire dealers. That is included in Option C. That could be a report to the EQC and facilitated by the EQC. She thought there was an option between A and B in regard to MEPA. Conducting agency, regulated community and public training was important. Maybe there could be two opportunities for training. She would also like the handbook updated so it would be meaningful. She felt that voluntary BMPs is already out there. She would like to see TMDLs in the water quality portion. Under mandatory and general reporting, by using Option B, the Council could do almost all of what HB 132 has asked. Penalty assessment could be covered with the HB 132 requirements.



SEN. MESAROS agreed with MR. TOLLEFSON'S proposal with the exception of MEPA. He would like to look at an option between A and B to where the handbook could be updated to reflect the changes. In the mandatory and general reporting of enforcement, he sees a lot of overlapping.

SEN. BROOKE asked MS. WILLIAMS, between Option B and C, if Option C would only take .05 FTE. MS. WILLIAMS maintained that the resources associated with Option C is only EQC staff time. Preparation would go on for whoever was participating in that seminar. EQC Staff would be coordinating guest presenters. They could cover both the forestry BMP program as well as the other four that have been noted as existing in Montana. They could also get someone in to cover ISO. This would be five percent of someone's time over the interim.

MR. SORENSEN agreed with SEN. BROOKE that TMDLs and BMPs should have a pretty good focus. With the new legislation, BMPs are going to be used to substantiate that the Council is meeting water quality standards in streams until the specific TMDL is completed for that watercourse. It is important to see if the BMPs are doing what the Council wants.

SEN. CRISMORE agreed that TMDLs will be important in the next few years and the Council will need to be a part of that all the way through.

CO-CHAIR COCCHIARELLA questioned whether putting TMDLs under water policy diminished its importance. MR. SORENSEN stated that from MR. TOLLEFSON'S laundry list he was not sure where the TMDLs were placed. He would like TMDLs and BMPs either as a focus subject or within the water section.

SEN. BROOKE suggested bumping the Voluntary BMPs to have an evaluated piece on it. This would go up from .05 to .20 FTEs.

REP. HEAVY RUNNER was disturbed that the Council was dealing with a finite number of 3.2. He asked if the law says that the Council is required to do certain items, is the EQC

carrying out its fiduciary duty if it doesn't spend the time and get enough money allocated to do this. MR. EVERTS explained that in the past the Council has asked them to put down a number to get a general sense of the FTE allocations needed. These are guesses made for the Council to be aware of what it might take to accomplish their goals. They used this process last interim. In the past, they used a narrative work plan. The work plan they have provided is centered around the statutory responsibilities.

CO-CHAIR COCCHIARELLA related that the FTE situation is worse than it has been in the past. There are huge comp time hour burdens, which reduce the FTEs. They have the budget but they don't have enough people. When they created a full plate last interim, they overfilled and forced their staff to overwork to an incredible degree.

REP. HEAVY RUNNER questioned whether the agencies that had reporting duties needed the EQC to organize it for them or whether certain things should be available in terms of evaluation. CO-CHAIR COCCHIARELLA remarked that that was the reason for HB 132. The agencies didn't know what the Council wanted and the EQC didn't know what the agencies were doing, so that is where mandatory compliance and enforcement will save some time and provide better communication and understanding.

REP. GILLAN was concerned about putting a little bit of effort on a lot of different things and this would lead to no economy in scale because the staff will be scattered among a little bit of effort on a lot of different topics. MR. EVERTS commented that the Council would need to decide the depth of scope. The staff is interdisciplinary with a lot of different expertise. The ability to adapt is there.

MR. TOLLEFSON stated that as the interim went on there will be issues which will emerge that will need more focus. The water policy issues related to TMDLs may emerge as a place to put some of the cushion or there may be an area of growth management that the EQC wants to address more thoroughly. The Council may need to eliminate some of the laundry list later on.

**Motion: MR. TOLLEFSON MOVED TO ADOPT THE WORK PLAN.**

MR. TOLLEFSON explained this would involve updating the *MEPA Handbook*, conducting general MEPA training, using an evaluative component for the BMPs and making sure the TMDL question is addressed in the water policy area. There should be something to identify issues and look at the growth management problems.

CO-CHAIR MESAROS added that they maintain the small working group that was identified for the waste tire study.

REP. TASH seconded the motion.

CO-CHAIR COCCHIARELLA asked for clarification for BMPs and TMDLs and the purpose of the evaluation piece.

MR. TOLLEFSON explained there should be a way to identify how well one particular BMP program worked in comparison to another.

CO-CHAIR COCCHIARELLA remarked that she was worried about an evaluative piece for new programs when the goal of the study was to encourage more people to do it. She questioned what BMPs and the evaluative piece have to do with TMDLs and water policy.

MR. SORENSEN said he would like to see the Council evaluate land use practices to see where BMPs can be used for various practices. He stated that to improve water quality is the end goal. He would also like to try to evaluate the effectiveness of BMPs on water quality. The reason he would like to tie it to TMDLs is that in the interim, if specific TMDLs are designed for each water course in Montana, there is a presumption that BMPs will protect the water course.

CO-CHAIR COCCHIARELLA asked if BMPs were being moved under water policy.

MR. SORENSSEN stated he was flexible and would like an emphasis on BMPs that includes the evaluative portion and it could be put under water policy with TMDLs.

REP TASH stated that the purpose of TMDLs is to identify those streams that are in compliance and those that may not be in compliance. This is an opportunity, by incorporating the voluntary BMPs, to prove the effectiveness of stream bank management. This would then identify which streams are subject to meeting the criteria of TMDL.

SEN. BROOKE stated that if one of the optional topics fits with an assigned topic, they need to be moved to work together. BMPs, TMDLs and water policy need to work together.

MR. TOLLEFSON commented that the voluntary BMPs could be combined in the overall water policy discussion. It is a current issue.

CO-CHAIR MESAROS stated there are some defined boundaries before the Council. Incorporating the TMDLs in the water policy area could bring questions in their results. The work plan is a road map and is not etched in stone.

CO-CHAIR COCCHIARELLA was unsure where the growth management piece was in the work plan.

MR. TOLLEFSON explained it was the last one and an open issue at this time. It is there for the Council to consider.

CO-CHAIR COCCHIARELLA asked to amend the motion to include in the discussion of growth management the three issues of the other requests. This should also include local and state coordination of subdivision review. This comes from enforcement and compliance.

**Vote: THE MOTION CARRIED UNANIMOUSLY.**

## **IX. ADOPTION OF INTERIM EQC CALENDAR**

MR. EVERTS announced there was one mistake on the interim calendar (**EXHIBIT 13**). The October 1998 meeting should read Friday, October 30, 1998 as opposed to the 31st.

## **X. TRIBUTE TO REPRESENTATIVE DICK KNOX**

CO-CHAIR COCCHIARELLA presented a tribute to REP. DICK KNOX, (**EXHIBIT 14**) . She presented a plaque which read "Presented by the Environmental Quality Council to Honor the Life and Achievement of Representative Dick Knox for his integrity, fairness, statesmanship, loyalty, common sense and tenacity." Quote from Henry Clay: "Of all the properties which belong to honorable men, not one is so highly prized as that of character."

CO-CHAIR COCCHIARELLA said the first time REP. KNOX intervened in her life was on a subcommittee created by the Business and Industry Committee on her radon control bill, which turned out to be one of the best Radon Control Acts in the nation. This had a lot to do with Dick. He had to moderate a conflict between REP. HANSON and herself. It did get quite heated. Dick looked at both of them and stated, "No, we're not doing that." He made that piece of legislation work.

REP. TASH said he felt very privileged to have worked with Dick on the Natural Resource Committee for two sessions. He brought him an understanding and ability to contain his emotions. He had a remarkable ability to diffuse situations. He and Doris both committed a lot of time to the State of Montana. He always stayed until the job was done. His blood condition was ongoing for some years. About three weeks before his last hospitalization, he picked his coat up on the way out and headed for St. Peter's Hospital. A new person, whom he wasn't familiar with, checked him in for his blood transfusion. He told her he was REP. KNOX and he was there for his blood transfusion. He said she gave him a strange look and later he realized he had picked up REP. WAGNER'S coat on the way out, which had his name tag. He found as much humor in it as the rest of us.

SEN. BROOKE reflected on the time he would not tolerate the criticism of the staff. She was sure that MICHAEL KAKUK will forever hold Dick in high regard. Once she understood the role that Dick played in that situation she had nothing but esteem and respect for the way he managed the problem and brought a level of respect and dignity to the staff.

CO-CHAIR MESAROS commented that the State of Montana is a better place to live in because of DICK KNOX. He brought a high degree of credibility and integrity to the process. He was respected by all. He carried quite a few of his bills on the House Floor. He was a great role model for the committee.

REP. OHS claimed Dick was an example of what a citizen legislator is all about. He was concerned about the State of Montana. He was his seat mate his first term in the House. He was a great mentor. When he was involved in the situation in Garfield County, he called Dick and, of course, he was there to help. They had made arrangements to go into the Freeman Compound late one night. They were supposed to meet the people in the field and then drive in with the lights out, so the media wouldn't know what they were doing. They had a 96 Suburban and the lights don't cut out, they are on all the time. They got to the point where the lights were supposed to go out, and they wouldn't go out, so Dick reached around and tried to hit the light switch and the flashers came on. He hit the horn. He said they were just certain the whole thing would be ended right there.

CO-CHAIR COCCHIARELLA commented they hadn't decided what to do with the plaque. They wondered what would be appropriate for his family.

MR TOLLEFSON suggested getting two and putting one in the meeting room. His family would love to have the plaque.

CO-CHAIR COCCHIARELLA stated that was a very good idea and they should do that.

REP. TASH explained that after the graveside services other members of the House Natural Resource Committee had thoughts about a living tribute. He and his wife considered a tree planting somewhere on the capitol campus. MR. EVERTS looked into the mechanics on how this could be accomplished. REP. TASH stated that Doris suggested that the family could be here at a time that would coincide with an EQC meeting.

## **XI. OTHER BUSINESS**

SEN. CRISMORE commented on MR. EVERTS working for the electrical utility deregulation committee. The Council has an oversight responsibility and it would be very appropriate for MR. EVERTS to continue with what they have asked him to do.

MR. SORENSEN asked MR. EVERTS what his position would be on the committee. MR. EVERTS explained the staffing responsibility would be divided up by three people. The total time would be split three ways. They do not have immediate responsibilities until electric deregulation transition plans have been filed and approved.

CO-CHAIR COCCHIARELLA expressed her interest in having the electric deregulation work appropriately. That group could not have a better staff person than the person who knows better than anyone what goes into that legislation. If no one has an objection, the Council would endorse his service to that group.

SEN. MESAROS urged the Council to hold at least one meeting a year outside of Helena. That is healthy and responsive to the public.

CO-CHAIR COCCHIARELLA agreed that was a good idea.

## **XII. ADJOURNMENT**

The meeting adjourned at 4:30 p.m.